

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EMMITT GRIER JR.,

Plaintiff

v.

EDWARD J. KLEM, et al.,

Defendants

FILED

06 APR 10 12:19

C.A. 05-05 ERIE

Judge Maurice B. Cohill Jr.

CLERK
U.S. DISTRICT COURT

**PLAINTIFF'S COUNTER MOTION
FOR SUMMARY JUDGMENT PURSUANT
TO FED. RULES CIV. PROC. 56.(1)**

AND NOW comes the plaintiff Emmitt Grier Jr., who files this counter motion for summary judgment pursuant to Fed. Rules of Civ. Proc. 56. (1); and in support thereof states the following:

PRELIMINARY STATEMENT

1. Plaintiff moves with this motion for summary judgment because the facts of the case are not in dispute. Only the issue is being obscured by the District Attorney's Office.

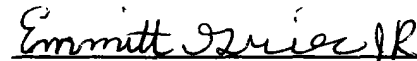
2. Plaintiff provides proof from the record that identification is clearly an issue. Albeit, one the District Attorney wants to ignore.

3. Plaintiff claims a Due Process of law deprivation because of the defendants refusal to release the biological evidence in their possession for DNA testing.

4. Plaintiff claims an Equal Protection of the Law deprivation because defendants will not allow plaintiff to make a conclusive showing that he is innocent of the crimes for which he is incarcerated, (The disputed Rapes) thereby preventing plaintiff from access to the state and federal court to obtain legal relief, in violation of the Due Process and Equal Protection guarantees of the fourteenth Amendment.

5. Plaintiff also claims that he was deprived of the opportunity to make a conclusive showing of actual innocence, in violation of the Cruel and Unusual Punishment Clause of the Eighth Amendment.

Respectfully Submitted.



Emmitt Grier, Jr., pro se,
No. EJ-7879
SCI-Mahanoy
301 Morea Road
Frackville, PA. 17932

3-31-06
date:


CERTIFICATE OF SERVICE

I hereby certify that I am placing in the U.S. mail box located at (the front of my cell block) a true and correct copy of Plaintiff's Reply Brief, Plaintiff's Counter Motion and Brief with Statement of Material Facts, in Support of Summary Judgment Pursuant to Fed. R. Civ. P. (L.R. 56.1); for service upon the person(s) listed below.

**Service by certified mail
Addressed as follows:**

United States District Court
For the Western District of PA.
Hon. Judge Maurice B. Cohill Jr.
17 S. Park Row, Room 206
Erie, Pennsylvania 16501

Matthew J. McLaughlin
246 West Tenth Street
Erie Pennsylvania. 16501
Counsel for Defendant,
Office of Dist. Attorney


Emmitt Grier Jr., pro se,
No. EJ-7879
SCI-Mahanoy
301 Morea Road
Frackville, Pa. 17932

3-31-06
date:

EJ7879

SCI-Mahanoy
301 Morea Road
Frackville, Pa. 17932

United States District Court
For the Western District of Pa.
Hon. Judge Maurice B. Cohill Jr.
175, Park Row, Room 206
Erie, Pennsylvania 16501

April 4, 2006

RE: C.A. NO. 05-5 Erie

Dear Mr. Judge Maurice B. Cohill JR.

Enclosed please find plaintiff's Counter Motion and Brief in support of Summary Judgment along with Concise statement of Material Facts. Plaintiff's package was returned because of improper certification which is included in this package.

The package mailed on the 27th, of March contains plaintiff's Reply brief and materials prematurely mailed. Therefore a corrected copy of the Counter Motion as stated above is being re-mailed.

Thank you
Emmitt Dine Jr.

C.C. Matthew J. McLaughlin
File

DC-138A

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EJ 7879

LOCATION

EA-55

DATE

3-31-06

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FACILITY NUMBER

LOCATION

DATE

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Counsel For De Fe
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4. INMATE'S SIGNATURE



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Sent To: **Matthew J. McLaughlin**
 Street, Apt. No., or PO Box No.: **846 West Tenth Street**
 City, State, ZIP+4: **OFFICE OF Dist. Attorney**
ERIE, PENNSYLVANIA 16501

PS Form 3800, June 2002 See Reverse for Instructions

SENDER: COMPLETE

- Complete items 1, 2, 3, and 4 if Restricted
- Print your name and address so that we can return this card to you or on the front if space permits

1. Article Addressed to:
Matthew J. McLaughlin
246 West Tenth
Erie Pennsylvania
Counsel For
OFFICE OF DIST. ATTORNEY

2. Article Number
 (Transfer from service label)

PS Form 3811, August 2002